

New election law: the parliament's soap opera

No. 6/207, February 5, 2001

A little over a year from now the whole country, again, will be experiencing «the moment of truth», as elections are usually described by assorted commentators here. However, the «ground rules» for the planned election show have not been legally approved yet. Apparently, due to a number of internal contradictions and external controversies, proportional innovations and other significant modifications the parliamentary election law tends to function like a boomerang, steadily coming back to the hand of the last person(s) to touch it.

On January 18, 2001, members of the Ukrainian parliament voted 254 to 17, with 4 abstentions, in favor of the new election law. The voting was ignored by 120 MPs - members of the Trudova Ukraina, Vidrodzhennya Rehioniv, Solidarnist and the SDPU(o).

The current, majoritarian-proportional system, was first proposed as an alternative to the purely majoritarian system in November 1993. However, then the idea of full involvement of political parties in the electoral process through political parties was supported only by a minority of MPs - members of the Socialist party, the Rukh, the party of Democratic Renaissance of Ukraine and some of the Communists. As a result, on November 9, 1993, 199 MPs voted against the mixed electoral system.

The new election law provides for the introduction of a purely party-based proportional representation system, based on comprehensive, equal, direct and confidential voting right. The new law did not specify any numerical composition of the would-be parliament but contained references to the Constitution. Specifically, Article 76 of the Constitution of Ukraine stipulates that the parliament consists of 450 MPs elected for four years. If the Constitution is amended in accordance with the result of the April 2000 referendum, the number of MPs is to be reduced to 300.

Under the new election law, political parties and their blocks are the only legitimate participants of the elections. To enter the parliament, every party or block is to overcome a 4% pass barrier, the same as specified by the previous election law, signed by the head of the state on October 22, 1997.

In order to take part in the race, a party or block should collect 500,000 signatures of supportive voters - a significant reduction from 1 million, required by the previous law.

Unlike specified by the previous election law, territorial election commissions will be formed by the Central Election Commission, and local commissions will be formed by relevant territorial election commissions. According to the new law, members of the election commissions are nominated by participating political parties and blocks. Leadership of the commissions will be determined by the partisan compositions of the commissions.

The election campaign is supposed to be funded from the national budget and parties' and blocks' election funds limited to 150,000 tax-free minimum incomes (currently equivalent to about UAH 2.5 million or US\$ 446.5 thousand). Parties that spend on their campaigns beyond that limit or use funding from sources other than the state budget appropriations and their election funds may be (but not necessarily should be) withdrawn from the race. The law also provides for rules of equal access to the media.

Factions and groups that did not take part in the voting on January 18 give different reasons as explanations of their positions. For instance, Speaker of the parliament Ivan Plushch, leader of the Solidarnist groups Petro Poroshenko and representatives of the Trudova Ukraina maintain that the current mixed system should be preserved.

Instead, leader of the SDPU(o) faction Oleksandr Zinchenko argues that his faction «conceptually» favors the proportional election system (Interfax-Ukraine, January 18, 2001) but that it chose not to

vote for the new election law because the law itself was deficient and the faction's proposed chances were not taken into account. He believes the amount of funds each of the parties of blocks can spend on its election campaign is too low, and the 4% barrier should be raised to 5% in order to stimulate partisan restructuring and automatically reduce chances of small «fighter» parties - to avoid or at least to reduce the 1998 pattern of participation of 30 parties and blocks.

Remarkably, the new election law was authored by members of the Communist party faction, Georgy Ponomarenko and Anatoly Peigalain. Like in 1998, the proportional system is beneficial primarily for major political parties with broad grass-root membership - the Communists, in Ukraine's case. Commenting on the adoption of the new law, leader of the Communist party Petro Symonenko called it «the right step» and announced that the proportional election law would contribute to «clear gradation of political responsibility of parties for their positions in the parliament in the voters' eyes» (Interfax-Ukraine, January 18, 2001).

In 1997 Petro Symonenko was aware that the introduction of the mixed system would provide his party with a good chance to receive the majority of seats in the new Rada. «Leonid Kuchma understands that in the 1998 election the majority of votes will be received by the left forces, should it proceed according to the mixed system. That is why the President is looking for excuses to block the election law,» he said (Kulyk V., Holobutsky O., Kryvosheyenko O. Election-98., K., 1997., p. 25). Hence, the Communists' reaction to the new election law and the proportional system is not unusual.

On the other hand, there has been multiple warnings that the purely proportional electoral system could guarantee a «red relapse», that the day after the «proportional experiment» Ukraine might turn red politically, and would probably proceed to follow the «Bulgarian pattern» - which, in fact, proved to be a strong anti-Communist injection to Bulgarians. Predictions of this kind are mostly based on opinion poll results suggesting that about 22% of Ukrainian voters - the so-called «protest electorate» - are likely to vote for the party led by Petro Symonenko (Vlada i Polityka, January 26, 2001). However, it is obvious that the «protest electorate» grows when there are reasons to protest. If Ukrainian economy (suddenly) begins to demonstrate dynamic recovery, the number of the «protest electorate» is likely to shrink, and the Communists will be left with their election rhetoric and appeals to nostalgic sentiments.

Meanwhile, with no significant signs of economic recovery seen and felt by voters, opinion poll results, received by the Kyiv International Institute of Sociology, demonstrate that almost one in four respondents is prepared to vote for the Communist party, the Socialist party or the Progressive Socialist party, i.e., the key parties that identify themselves primarily as the left. The polls also showed growing influence of left-wing political parties and stressed that «three years ago the support rate was almost 9% less» and that «should the election be based on the proportional system, the balance between the left and the right in the Verkhovna Rada would be 55% to 45%» (Holos Ukrainy, November 1, 2000). The Communist party is a clear leader, according to the poll results: almost one out of five respondents said he/she was prepared to vote Communists. Sounds convincing. However, other polls - for instance, the one held by the Donetsk Information and Analysis Center - show that the popularity of Communists decreased by almost 9% within the past year in Donetsk, traditionally seen as the «red» region (Ukraine Moloda, October 24, 2000). This also sounds convincing and may be partly regarded as an argument in favor of views of non-left supporters of the proportional system. According to Victor Pynzenyk, leader of the Party of Reforms and Order that backed the new election law, «none of the polls shows that the left receive 50%. They are always fewer. Hence, the majority is not left.» Commenting on chances for a «red relapse» following the introduction of the proportional election system, he argues: «The issue is being discussed at length with the only goal - not to allow the election based on the proportional system. The left-wingers' position has shaken seriously. Any positive trends will continue to take away the votes from them. Therefore, there is a need to help the government to pursue chances today» (Ukraine Moloda, January 17, 2001).

The balance of pros and cons of the proposed proportional election system shows a paradox. On the one hand, the number of left-wingers in the parliament can grow, followed with all related consequences, from blocking the reform process to new bows to the union of Russia and Belarus. On the other hand, a proportional election system would speed-up the political restructuring processes. Sampling of political party representation in the 12th and the 13th parliaments of Ukraine shows that the number of MPs - members of political parties increased by almost four times (from 40 to 168). Official data of the Central Election Commission listed 168 members of political parties running in the 1994 election, and shortly after the polling day it became clear that at least 48 more MPs displayed

party preferences. The influence of political parties on factions and groups was a critical factor in the 13th parliament. The 1998 election was a significant break-through for political parties, resulting in the arrival of nine of them to the 14th (now 3rd) parliament.

However, nowadays for a Ukrainian political party getting to the parliament does not mean taking political responsibility. Being represented in the parliament and even having their own factions, Ukrainian political parties bear no responsibility for their law-making activities. Hence, it is not unusual, but rather symptomatic, that the debates about the introduction of a purely party-based proportional election system coincided with reinvigorated debates about the idea of creation of a coalition government. The issue may be the highlight of the new, 7th session of the parliament, given that Prime Minister of Ukraine Victor Yushchenko publicly announced that «creation of a coalition government is realistic already in 2001», and that nowadays the law-makers and the executive branch are back on the issue of «regulations for responsibility of the government and the parliament, the mechanism of cooperation and interaction». In particular, according to the Prime Minister, the government and the parliament are about to «sit at the negotiation table to discuss fundamentals of that cooperation» (Chas, January 26, 2001). In order to carry out the strategy successfully, there is a need for a well-structured legislature. Probably, the introduction of the proportional system in the context of prospects for the establishment of a coalition government may become a substantial element of reforming the whole system of distribution of power and governance in Ukraine.

The adoption of the new election law appears even more significant given the fact that on the same day the MPs voted down the President's version of implementation of the April 2000 referendum results. The bill, designed to secure the implementation of amendments to Articles 76, 80 and 106 of the Constitution, provided for the reduction of the Rada corps from 450 to 300 MPs, the abolishing of the parliamentary immunity to criminal prosecution without the permission of the Rada, and giving the President the right to dissolve the parliament should it fail to make a functional majority within one month or adopt a budget within three months. The MPs only agreed to establish an ad hoc commission to finish the draft bill on amending the Constitution, but a number of critical issues of the future of the parliament remained unclear. This ambiguity is fundamental for the prospects of the new election law, and in a sense it has almost certainly made the law doomed for being rejected by the President. Members of the parliament seem to be aware of that, including Mr. Zinchenko of the pro-presidential SDPU(o) who stated that the President's reaction to the proposed law would depend «on many factors». One of such key factors, according to Zinchenko, is the adoption of the law on implementation of the April 2000 referendum results by the Rada. «If the parliament is unable to endorse the implementation laws, the President's reaction will be adequate,» he said (Interfax-Ukraine, January 18, 2001).

The forecast appears to be a good one. Almost a week after the Rada adopted the new election law Presidential chief of staff Volodymyr Lytvyn announced that the proportional election law was «not timely now» for Ukraine «for the elections based on party lists should be approached gradually». He argued that the proportional election system could be introduced «in a [longer-term] perspective in the context of political structuring» (Uriadovyi Kurrier, January 25, 2001). For the 2002 election campaign it would be advisable to return to the mixed system and only «substantially improve the [existing] law», Lytvyn said.

Later on, commenting on the probability that the election law would be signed by the President, he argued that «Leonid Kuchma today has solid arguments against approving such a law,» and added that the President believed the current, mixed election law should be improved and that the 2002 election should be held in accordance with the mixed system (Fakty i Kommentarii, February 1, 2001). The newly adopted election law is likely to be vetoed by President Kuchma, and, apparently, in the current circumstances it will be very difficult to find at least 300 MPs who will dare to overrun the President's veto.

Meanwhile, the situation with the new parliamentary election law continues to develop similarly to the 1997 election patterns.